

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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**UNITED STATES OF AMERICA**

**v.**

**JAMIE EDELKIND**

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) **CRIMINAL NO.**

) **04 – 10066 MEL**  
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**DEFENDANT JAMIE EDELKIND’S RESPONSE TO LEHMAN  
BROTHERS BANK, FSB’S EXPEDITED MOTION TO MODIFY  
ORDER OF FORFEITURE**

The defendant Jamie Edelkind (“Edelkind”) is the sole defendant in the criminal action that produced the Preliminary Order of Forfeiture dated June 27, 2005. The Amended Judgment, dated August 27, 2005, ordered forfeiture “as set forth in the preliminary order.” Edelkind has appealed the Amended Judgment, including the order of forfeiture.

The Preliminary Order of Forfeiture encompassed, *inter alia*, the real property located at 940 Nantasket Avenue in Hull Massachusetts (“the Hull property”). Lehman Brothers Bank, FSB (“Lehman”) claims it holds the first mortgage on the Hull property.<sup>1</sup>

Ancillary proceedings under Rule 32.2(c) of the Federal Rules of Criminal Procedure have commenced but have not yet been completed. Edelkind does not have standing in the ancillary proceeding. However, F.R.Crim.P. 32.2(d) provides that “If the court rules in favor of any third

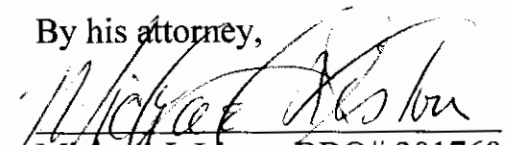
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<sup>1</sup> Edelkind continues to take the position that Lehman had not acquired the mortgage or underlying note, if it ever did, until after the completion of his trial.

party while an appeal is pending, the court may amend the order of forfeiture but must not transfer the property interest to a third party until the decision on appeal becomes final unless the defendant consents in writing or on the record.”

Apparently without a prior ruling in its favor in the ancillary proceeding, Lehman nonetheless now moves that the Preliminary Order be modified to permit Lehman’s immediate foreclosure sale of the Hull property. The Hull property should have been sold long ago and it could have been sold long ago but for the government’s unwarranted and overbroad forfeiture allegations. Edelkind has been damaged by the delay and will be further damaged by further delay.<sup>2</sup> To the extent he has standing, Edelkind does not oppose Lehman’s request. To the extent his record consent is or may be needed under Rule 32.2(d), that consent is hereby given.<sup>3</sup>

By his attorney,

  
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Dated: October 6, 2005

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<sup>2</sup> The Amended Judgment includes an order of restitution in an amount that is reduced by any proceeds from the sale of the Hull property.

<sup>3</sup> It should be noted that Edelkind has always claimed that he never had an “interest” in the Hull property. Only Linda Edelkind had that interest.